



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2021-0083]**

**RIN 1625-AA00**

### **Safety Zone; Fincantieri Blasting Project; Menominee River, Menominee, MI and Marinette, WI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Menominee River in Marinette, WI within 1000 feet of a blasting area. This action is necessary to provide for the safety of life on these navigable waters during the daily blasting at the southern bank of the Menominee River near the Fincantieri Marinette Marine facility. This proposed rulemaking would restrict usage by persons and vessels within the safety zone. At no time during the effective period may vessels or person pass between the construction barges and southern bank of Menominee River. Also during the entire effective period, vessels are prohibit from transiting the safety zone at speeds that would create a wake. Additionally, during blasting operations, lasting approximately 15 minutes each evening, no person or vessel may enter the safety zone. These restrictions would apply to all vessels during the effective period unless authorized by the Captain of the Port Lake Michigan or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2021-0083 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7148, email [Jeromy.N.Sherrill@uscg.mil](mailto:Jeromy.N.Sherrill@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

On February 26, 2021, Roen Salvage Company notified the Coast Guard that it will be conducting daily blasting operations beginning April 1, 2021 to November 30, 2021, for an approximate 15 minute period occurring between 3:30 to 5:30 p.m. in conjunction with a construction project. The blasting will take place on the southern bank of the Menominee River near the Fincantieri Marinette Marine facility. The Captain of the Port Sector Lake Michigan (COTP) has determined that potential hazards associated with the blasting would be a safety concern for anyone within a 1000 foot radius of the blasting site.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 1000-foot radius of the blasting site before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46

U.S.C. 70034 (previously 33 U.S.C. 1231).]

The Coast Guard is issuing this temporary rule with an abridged notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.”

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not undertaking a thirty-day comment period with respect to this rule because the Coast Guard received details of these operations with insufficient time remaining to undergo a full thirty-day comment period. While it is impracticable to undergo a full thirty-day comment period and still protect the public from the hazards associated with these operations, the Coast Guard invites comments for the next fifteen days.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable for the same reason stated above - immediate action is needed to respond to the potential safety hazards associated with the daily blasting.

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a safety zone lasting from April 1, 2021 to November 30, 2021 for an approximate 15 minute period occurring daily between 3:30 to 5:30 p.m. The safety zone would cover all navigable waters within 1000 foot radius of the blasting site which will be on the southern bank of the Menominee River at the Fincantieri Ship Yard in Marinette, WI. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the daily blasting event. No vessel or person would be permitted to enter the safety zone during blasting

operations. During non-blasting times, no vessels would be permitted to transit the area at speeds that would create a wake. Additionally, no vessels would be permitted to transit between the construction barges and the southern bank of the Menominee River. No vessels or person would be allowed to conduct the three preceeding activities without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the characteristics of the safety zone. The safety zone created by this proposed rule will relatively small and is designed to minimize its impact on navigable waters. This proposed rule will prohibit entry into certain navigable waters of the Menominee River in Marinette, WI, and it is not anticipated to exceed 15 minutes in duration each day. During non-blasting operation vessels would be allowed to enter the safety zone at speeds that do not create a wake. Additionally, the exclusion area between the construction barges and southern bank of the river is small and allows for plenty of space within the channel for vessels to transit the area north of the construction barges. Thus, restrictions on vessel movement within

that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP Lake Michigan.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security

Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would prohibit vessels from passing through a small area located between the construction barges and the southern bank of the Menominee River, would prohibit entry into the all navigable waters within a 1000 foot radius of the construction barges for a maximum of 15 minutes per day during blasting activities, and would prohibit vessels from transiting the safety zone at speeds that would create a wake. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T09-0083 to read as follows:

**§ 165.T09-0035 Safety Zone; Blasting Project; Menominee River, Marinette, WI.**



(a) Location. All navigable waters of the Menominee River within 1000 feet of the blast area on the southern bank of the river at coordinates 43.0705000°N, 086.2346667°.

(b) Enforcement Period. The safety zone portion of the regulated area described in paragraph (a) of this section is effective for 15 minutes between 3:30 p.m. and 5:30 p.m. each evening from April 1 to November 30, 2021. The part of the safety zone between the construction barges and the southern bank of the river, and the no-wake zone portion of the regulated area described in paragraph (a) of this section will be in effect continuously from April 1 to November 30, 2021.

(c) Regulations.

(1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The “designated representative” of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone during blasting operations, or at speeds that would create a wake, must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: March 1, 2021.

D. P. MONTORO,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port Lake Michigan.

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